

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JOSHUA LASHAWN BANKS, #171132

PLAINTIFF

v.

CAUSE NO. 1:15CV178-LG-RHW

LT. LATASHA JOHNSON, et al.

DEFENDANTS

**ORDER ADOPTING REPORT AND RECOMMENDATION,
GRANTING MOTION FOR SUMMARY JUDGMENT,
AND DISMISSING COMPLAINT FOR FAILURE TO STATE CLAIM**

This cause comes before the Court on the Report and Recommendation [30] of United States Magistrate Judge Robert H. Walker entered in this cause on April 26, 2016. Plaintiff Banks filed this lawsuit against officials at the South Mississippi Correctional Institution pursuant to 42 U.S.C. § 1983. He complains that prison officials failed to protect him from attack by other inmates on April 14, 2015, used excessive force by spraying him with mace, and were deliberately indifferent to his need for medical attention after the attack.

The Defendants filed a summary judgment motion asserting that Banks had not exhausted any of his claims, because he had not filed a grievance concerning the April 14, 2015, incident. (ECF No. 28). Banks is proceeding in this case *in forma pauperis*, and therefore Magistrate Judge Walker reviewed the claims under authority of the Prison Litigation Reform Act of 1996. During an Omnibus hearing conducted on February 2, 2016, Magistrate Judge Walker confirmed that Banks had not filed a grievance concerning the April 14, 2015, incident. Accordingly, the Magistrate Judge recommended that the claims be dismissed for failure to state a claim.

The Report and Recommendation containing the Magistrate Judge's findings and conclusions was mailed to Banks at his last known address of record. The acknowledgment of receipt filed with the Court shows Banks received the Report and Recommendation on May 4, 2016. (ECF No. 31). Banks has not filed an objection to the Magistrate Judge's findings and conclusions within the time allowed. Under these circumstances, the Court need only review the Report and Recommendation and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

After having thoroughly reviewed the Report and Recommendation, the Court finds it neither clearly erroneous nor contrary to law. The Magistrate Judge properly found that Banks had failed to exhaust his administrative remedies prior to filing this civil rights lawsuit, which warrants dismissal. The Report and Recommendation will be adopted as the findings and conclusions of this Court.

IT IS THEREFORE ORDERED AND ADJUDGED that the Report and Recommendation [30] of United States Magistrate Judge Robert H. Walker entered in this cause on April 26, 2016, should be, and the same hereby is, adopted as the findings of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendants' Motion [28] for Summary Judgment is **GRANTED** and this case is **DISMISSED**.

SO ORDERED AND ADJUDGED this the 27th day of May, 2016.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE